

REMARKS

Applicants appreciate the Examiner's careful review of the present application, and respectfully request reconsideration in light of the following remarks.

No amendment has been proposed in this Response. Claims 1-22 remain pending in the application.

Allowable Subject Matter

The Examiner's indication that claims 16-22 are allowable, and claims 2 and 3 contain allowable subject matter is noted with appreciation. However, in light of the reasons discussed below, it is unnecessary on this record to rewrite claims 2 and 3 into independent form at this time.

Rejection under 35 U.S.C. § 103

Claims 1 and 4-15 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Swant* (US 2005/0032494) in view of *Ruan* (US 2004/0246922). Applicants respectfully traverse this rejection for the reasons discussed below.

The rejection of claims 4 and 6-10 under § 103(a) appears to contradict with the indication made in the Office Action that claims 2 and 3 contain allowable subject matter. When a claim is patentable, all the claims depend therefrom should be deemed allowable because they only further limit the scope of the allowable claims. Here, claims 4 and 6-10 depend from allowable claims 2 and 3, and thus is believed to contain allowable subject matter for at least their dependency upon allowable claims 2 and 3.

Further, Applicants respectfully submit that the PTO fails to comply with its obligation in establishing a *prima facie* rejection.

MPEP § 2142 states that “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” Also, “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. 398 (2007), quoting *In re Kahn* with approval (emphasis added). Moreover, “[w]here a claim is refused for any reason relating to the merits thereof it should be “rejected” and the ground of

rejection fully and clearly stated, and the word "reject" must be used. See MPEP § 707.07(d) (emphasis added). In fact, "[t]he goal of examination is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity." MPEP § 706 (emphasis added).

Here, it appears that the PTO overlooked the recited, as amended according to the previous response, "a test analyzer body configured for performing management of a test call including channel establishment/release of the base station, for generating mass mobile communication multimedia test calls, and for measuring and analyzing an operational state of the system including service-specific functions and performance of the system," as recited in independent claim 1 (emphasis added). Instead, the PTO appears to rely only upon the originally-filed claims, and the Office Action appears to be silent regarding any indication or rationale for rejecting the recited "test analyzer body configured . . . for generating mass mobile communication multimedia test calls"

Therefore, the PTO has failed to establish a *prima facie* rejection for rejecting independent claim 1 because the Office Action fails to clearly indicate how the above-identified features are considered rejected under § 103(a). The rejection of independent claim 1, as well as dependent claims 4-9, is improper.

With regard to independent claim 11, the PTO simply states that the same rationale for the rejection of claim 1 applies to claim 11. Therefore, the rejection of independent claim 11, as well as dependent claims 12-15, is improper for at least the reasons advanced above for claim 1.

In addition, *Swant* fails to disclose or suggest the above-mentioned features as explained in the previous response, and *Ruan* appears to be silent regarding these features as well.

Ruan describes a roaming decision-making method comprising calculating an association quality for a current access point. See Abstract of *Ruan*. The calculation of the association quality is based on parameters such as signal strength of data and beacon packets of current association. See para. 0048-0049 of *Ruan*. As such, *Ruan* at best describes monitoring the current connection between a wireless device and a currently associated access point. However, *Ruan* appears to be silent regarding neither a test analyzer nor any unit that generates "test calls."

For at least the reasons stated above, claims 1 and 4-15 are patentable over *Swant* and *Ruan* as applied in the Office Action.

Withdrawal of the rejection of claims 1 and 4-15 is respectfully requested.

If the Examiner intends to further reject any pending claim, detailed explanation and rationale for the rejection in the next non-final Office Action, if any, is respectfully requested.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the present application should be in condition for allowance and a Notice to that effect is earnestly solicited. Early issuance of a Notice of Allowance is courteously solicited.

The Examiner is invited to telephone the undersigned, Applicants' attorney of record, to facilitate advancement of the present application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

LOWE HAUPTMAN HAM & BERNER, LLP

/Yoon S Ham/
Yoon S. Ham
Registration No. 45,307

Customer Number: 22429
1700 Diagonal Road, Suite 300
Alexandria, Virginia 22314
(703) 684-1111
(703) 518-5499 Facsimile
Date: March 29, 2011
YSH/TC/jr